

risk. Proper underwriting considerations include the condition and utility of the improvements, and various physical factors such as street conditions, amenities such as parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding and land faults. However, arbitrary decisions based on age or location are prohibited, since many older, soundly constructed homes provide housing opportunities which may be precluded by an arbitrary lending policy.

(8) *Fair Housing Act (title VIII, Civil Rights Act of 1968, as amended)*. Savings associations, must comply with all regulations promulgated by the Department of Housing and Urban Development to implement the Fair Housing Act, found at 24 CFR part 100 *et seq.*, except that they shall use the Equal Housing Lender logo and poster prescribed by Office regulations at 12 CFR 528.4 and 528.5 rather than the Equal Housing Opportunity logo and poster required by 24 CFR parts 109 and 110.

(d) *Marketing practices*. Savings associations should review their advertising and marketing practices to ensure that their services are available without discrimination to the community they serve. Discrimination in lending is not limited to loan decisions and underwriting standards; a savings association does not meet its obligations to the community or implement its equal lending responsibility if its marketing practices and business relationships with developers and real estate brokers improperly restrict its clientele to segments of the community. A review of marketing practices could begin with an examination of an association's loan portfolio and applications to ascertain whether, in view of the demographic characteristics and credit demands of the community in which the institution is located, it is adequately serving the community on a nondiscriminatory basis. The Office will systematically review marketing practices where evidence of discrimination in lending is discovered.

[54 FR 49666, Nov. 30, 1989, as amended at 60 FR 66870, Dec. 27, 1995. Redesignated at 63 FR 71212, Dec. 24, 1998]

## PART 533—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

### Sec.

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AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 1467a, and 1831y.

SOURCE: 66 FR 2106, Jan. 10, 2001, unless otherwise noted.

### § 533.1 Purpose and scope of this part.

(a) *General*. This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person (NGEP), insured depository institution, or affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) *Scope of this part*. The provisions of this part apply to—

(1) Savings associations and their subsidiaries;

(2) Savings and loan holding companies;

(3) Affiliates of savings associations and savings and loan holding companies, other than bank holding companies, banks, and subsidiaries of bank holding companies and banks; and

(4) NGEPs that enter into covered agreements with any company listed in paragraphs (b)(1) through (b)(3) of this section.

(c) *Relation to Community Reinvestment Act*. This part does not affect in any way the Community Reinvestment Act of 1977 (CRA) (12 U.S.C. 2901 *et seq.*), OTS's Community Reinvestment rule

(12 CFR Part 563e), or OTS's interpretations or administration of the CRA or Community Reinvestment rule.

(d) *Examples.* (1) The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

(2) Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issues that may arise in this part.

**§ 533.2 Definition of covered agreement.**

(a) *General definition of covered agreement.* A covered agreement is any contract, arrangement, or understanding that meets all of the following criteria—

- (1) The agreement is in writing.
- (2) The parties to the agreement include—
  - (i) One or more insured depository institutions or affiliates of an insured depository institution; and
  - (ii) One or more NGEs.
- (3) The agreement provides for the insured depository institution or any affiliate to—
  - (i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than \$10,000 in any calendar year; or
  - (ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than \$50,000 in any calendar year.
- (4) The agreement is made pursuant to, or in connection with, the fulfillment of the CRA, as defined in § 533.4 of this part.
- (5) The agreement is with a NGE that has had a CRA communication as described in § 533.3 of this part prior to entering into the agreement.

(b) *Examples concerning written arrangements or understandings—*(1) *Example 1.* A NGE meets with an insured depository institution and states that the institution needs to make more community development investments in the NGE's community. The NGE and insured depository institution do not reach an agreement concerning the

community development investments the institution should make in the community, and the parties do not reach any mutual arrangement or understanding. Two weeks later, the institution unilaterally issues a press release announcing that it has established a general goal of making \$100 million of community development grants in low- and moderate-income neighborhoods served by the insured depository institution over the next 5 years. The NGE is not identified in the press release. The press release is not a written arrangement or understanding.

(2) *Example 2.* A NGE meets with an insured depository institution and states that the institution needs to offer new loan programs in the NGE's community. The NGE and the insured depository institution reach a mutual arrangement or understanding that the institution will provide additional loans in the NGE's community. The institution tells the NGE that it will issue a press release announcing the program. Later, the insured depository institution issues a press release announcing the loan program. The press release incorporates the key terms of the understanding reached between the NGE and the insured depository institution. The written press release reflects the mutual arrangement or understanding of the NGE and the insured depository institution and is, therefore, a written arrangement or understanding.

(3) *Example 3.* An NGE sends a letter to an insured depository institution requesting that the institution provide a \$15,000 grant to the NGE. The insured depository institution responds in writing and agrees to provide the grant in connection with its annual grant program. The exchange of letters constitutes a written arrangement or understanding.

(c) *Loan agreements that are not covered agreements.* A covered agreement does not include—

- (1) Any individual loan that is secured by real estate; or
- (2) Any specific contract or commitment for a loan or extension of credit to an individual, business, farm, or other entity, or group of such individuals or entities, if—